

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 22-cv-22808-BLOOM

SOLOMON DAVID ROBERTS,

Petitioner,

v.

FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

THIS CAUSE is before the Court on *pro se* Petitioner Solomon David Robert's Motion for Certificate of Appealability, ECF No. [8]. Petitioner seeks to appeal the Court's September 6, 2022 Order, ECF No. [3], dismissing his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, ECF No. [1].

A prisoner seeking to appeal a district court's final order denying his petition for a writ of habeas corpus has no absolute entitlement to appeal and must obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180, 183 (2009). A certificate of appealability shall issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, a district court dismisses a petition based on procedural grounds, a petitioner must further demonstrate that reasonable jurists "would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate the Court's decision to dismiss the case without prejudice for failure to prosecute as Petitioner neglected to pay the filing fee or file a motion to

proceed *in forma pauperis* as required by 28 U.S.C. § 1915. Nor would reasonable jurists debate the Court's conclusion that it lacks subject matter jurisdiction as the Petition is "second or successive" within the meaning of 28 U.S.C. § 2244(b).

Accordingly, it is **ORDERED AND ADJUDGED** that Petitioner's Motion for Certificate of Appealability, **ECF No. [8]**, is **DENIED**. The case shall remain closed.

DONE AND ORDERED in Chambers at Miami, Florida, on July 14, 2023.

A handwritten signature in black ink, appearing to be 'JB' or similar, with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

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PRO SE